

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| | | |
|-------------------------|---|--------------------|
| BRENA OTEKPEN, |) | |
| Plaintiff, |) | |
| vs. |) | No. 3:04-CV-2448-N |
| |) | |
| HIGHLAND HILLS, et al., |) | |
| Defendants. |) | |

FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Pursuant to the provisions of 28 U.S.C. § 636(b), and an Order of the Court in implementation thereof, subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the Magistrate Judge are as follows:

I. BACKGROUND

In November 2004, plaintiff commenced this civil action against Highland Hills and Aaron Johnson.¹ On November 19, 2004, the Court granted plaintiff leave to proceed *in forma pauperis*. On May 12, 2005, it sent plaintiff a Magistrate Judge's Questionnaire (MJQ). It therein directed plaintiff to answer the questions contained in that document and return the answers within thirty days. It warned plaintiff, furthermore, that "[f]ailure to file answers to the Questions may result in the dismissal of the action for failure to prosecute." To date, plaintiff has filed no response to the MJQ.

II. INVOLUNTARY DISMISSAL

Rule 41(b) of the Federal Rules of Civil Procedure permits a court to dismiss an action *sua sponte* for failure to prosecute or follow orders of the court. *McCullough v. Lynaugh*, 835 F.2d 1126,

¹ It initially appeared the plaintiff sued only Highland Hills in this action. However, the Court recently discovered a second page of plaintiff's complaint which clearly identifies Aaron Johnson as a defendant.

1127 (5th Cir. 1988) (§ 1983 prisoner action). This authority flows from a court's inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962). Plaintiff has failed to comply with the order of the Court that she file her answers within thirty days of the Questionnaire dated May 12, 2005. Accordingly, the Court should dismiss her complaint.

III. RECOMMENDATION

For the foregoing reasons, it is recommended that plaintiff's complaint be dismissed without prejudice for failure to comply with an order of the Court pursuant to Fed. R. Civ. P. 41(b).

SIGNED this 13th day of July, 2005.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE